

MARCUS CADDELL RUSH §  
v. § CIVIL ACTION NO. 6:10cv82  
DIRECTOR, TDCJ-CID §

The Petitioner Marcus Rush, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Rush was convicted of sexual assault of a child on July 27, 2006, after having a previously entered conviction remanded. He did not file a direct appeal, although he did seek a *nunc pro tunc* judgment for time credits accumulated prior to the remand; his motion was originally denied, although a *nunc pro tunc* judgment was entered on May 28, 2008, awarding him 919 days of time credits.

Rush then sought state habeas corpus relief on December 8, 2008. This petition was denied without written order on March 4, 2009, and Rush filed his federal habeas petition on February 26, 2010.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed based upon the expiration of the statute of limitations. The Magistrate Judge calculated the finality date for Rush's conviction as being, alternatively, the date that judgment was

actually entered, and the date of the *nunc pro tunc* judgment, and determined that his federal petition was time-barred under either of these dates. The Magistrate Judge thus recommended that Rush's petition be dismissed and that Rush be denied a certificate of appealability *sua sponte*.

This Report gave Rush notice that the Court was contemplating a dismissal on limitations grounds, and provided him with an opportunity to object to this contemplated dismissal through the standard objections procedure. Rush filed a motion for extension of time in which to object, and this motion was granted to August 23, 2010; although Rush asked for a period to object up to September 9, 2010, that date has come and gone, and no objections have been filed. Accordingly, Rush is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Marcus Rush is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

**So ORDERED and SIGNED this 25th day of October, 2010.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**